

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER NOEL MCDONALD,

Plaintiff,

v.

TONY MAZZA et al.,

Defendants.

CASE NO. C14-5618 RBL-JRC

ORDER ON PENDING MOTIONS

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR1, MJR3 and MJR4.

Plaintiff filed a motion for appointment of counsel and a request to extend the deadline for responding to the Court's order to show cause or file an amended complaint (Dkt. 7 and 8). Because the Court has not ordered service of the original complaint, defendants have not appeared in this action. Accordingly, there will be no response to plaintiff's motions and the Court need not wait for the noting date to rule on the motions.

1 1. Appointment of counsel.

2 Plaintiff filed a two-page motion using a Washington State criminal case form and
3 altering the form (Dkt. 7). Plaintiff does not provide the Court with the information the Court
4 needs to determine if he is entitled to appointment of counsel.

5 There is no right to have counsel appointed in cases brought pursuant to 42 U.S.C. §
6 1983. Although the Court can request counsel to represent a party, 28 U.S.C. § 1915(e)(1), the
7 Court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328,
8 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v.*
9 *Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires the
10 Court to evaluate both the likelihood of success on the merits and the ability of plaintiff to
11 articulate his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789
12 F.2d at 1331.

13 Plaintiff does not show the Court that he is unable to articulate his claim nor does he
14 address his chances of success on the merits. The Court reviewed plaintiff's original complaint.
15 Plaintiff alleges that a correctional officer at the Cowlitz County Jail verbally abused him by
16 using "sexual profanity towards" plaintiff (Dkt. 1-1). Plaintiff names defendant Hight for failing
17 to train officers regarding the Prison Rape Elimination Act. Plaintiff also alleges that two
18 Captains, Lux and Moses, failed to take plaintiff's mental stability into account when they
19 investigated the incident (Dkt. 1-1). Plaintiff articulated the facts adequately, but mere verbal
20 abuse does not rise to the level of a constitutional violation. "[V]erbal harassment generally does
21 not violate the Eighth Amendment." *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987);
22 *see also Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004) (explaining that "the Eighth
23 Amendment's protections do not necessarily extend to mere verbal sexual harassment."). Thus,
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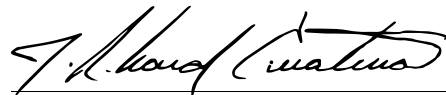
1 plaintiff fails to state a claim or show a likelihood of success on the merits on this portion of his
2 complaint. Further, the Court is aware of no constitutional right requiring jail officials to take a
3 person's mental condition into account when investigating allegations. Plaintiff may not seek
4 damages for emotional injury without a physical injury. *See*, 42 U.S.C. § 1997e(e); *see also*
5 *Pierce v. County of Orange*, 526 F.3d 1190, 1223-24 (9th Cir. 2008); *Jackson v. Carey*, 353 F.3d
6 750, 758 (9th Cir. 2003). Plaintiff does not allege any physical injury (Dkt. 1-1). The Court
7 concludes that plaintiff cannot show a likelihood of success on the merits and the motion for
8 appointment of counsel is DENIED.

9 2. Additional time.

10 Plaintiff asks the Court to give him until September 28, 2014 to file his amended
11 complaint or respond to the Court's order to show cause (Dkt. 8). Plaintiff states in his motion
12 that the motion is supported by an attached declaration, but there is no declaration attached to the
13 pleading. The Court will grant a short extension -- until September 19, 2014 -- for plaintiff to
14 file either a response to the order to show cause or an amended complaint that cures the defects
15 the Court outlined in its August 8, 2014 order (Dkt. 6).

16 The Clerk's Office is directed to send plaintiff a copy of this order and note the
17 September 19, 2014, deadline.

18 Dated this 26th day of August, 2014.

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21 J. Richard Creatura
22 United States Magistrate Judge
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